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Russell W. Warnock
BSH Home Appliances Corporation
100 Bosch Blvd.
New Bern NC 28562

In re Application of : DECISION ON
BAUMGARTNER et al :
PCT No.: PCT/EP2003/013041 :
Application No.: 10/537,131 :
Int. Filing Date: 20 November 2003 :
Priority Date: 02 December 2002 :
Attorney's Docket No.: 2002P01288WOUS :
For: DOMESTIC APPLIANCE AND SWITCH FOR :
APPLICATION IN A DOMESTIC APPLIANCE : UNDER 37 CFR 1.42

This is a decision on the declaration filed 08 February 2005, which has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 02 June 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). However, applicants did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because an executed oath or declaration was not provided.

On 26 September 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" must be submitted within two months from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

In response to the Notification mailed on 26 September 2005, applicants filed a declaration on 08 February 2005 signed by Ingeborg Sturm as heir of the inventor, Wilhelm Sturm, now deceased.

DISCUSSION

The declaration is unacceptable at this time because it is not clear that Ingeborg Sturm is the sole heir for the deceased inventor, Wilhelm Sturm. (see MPEP § 409.01(a)).

That is, there may be other heirs who are required to also sign the declaration. The declaration must indicate that Ingeborg Sturm is the sole heir for the deceased inventor in order for the Office to accept the application under 37 CFR 1.42.

In this instance, it is unclear if the residence and citizenship in the declaration is of the deceased inventor or heir. Applicants should have two separate sections one for deceased inventor and one for the sole heir in the declaration stating their citizenship, residence, and mailing address. See 37 C.F.R. §1.497(b)(2).

Moreover, a submission of a declaration executed by all of the heirs of the deceased inventor is construed as an indication that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. If this interpretation is incorrect applicants are required to promptly notify the Office of such and submit a declaration properly executed by the legal representative(s) of the deceased inventor.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is not accepted.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.42." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.



Rafael Baeares
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3276
Fax: (571) 273-0459